

§ 8.4

extend or distribute Federal financial assistance to another recipient.

(k) *Applicant* means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and “application” means such an application, request, or plan.

(l) *Other parties subject to this part* includes any governmental, public or private agency, institution, organization, or other entity, or any individual, who or which, like a recipient, is not to engage in discriminatory acts with respect to applicable persons covered by this part, because of his or its direct or substantial participation in any program, such as a contractor, subcontractor, provider of employment, or user of facilities or services provided under any program.

[38 FR 17938, July 5, 1973, as amended at 68 FR 51352, Aug. 26, 2003]

§ 8.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) *Specific discriminatory acts prohibited.* (1) A recipient of Federal financial assistance, or other party subject to this part, shall not participate, directly or through contractual or other arrangements, in any act or course of conduct which, on the ground of race, color, or national origin:

(i) Denies to a person any service, financial aid, or other benefit provided under the program;

(ii) Provides any service, financial aid, or other benefit, to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subjects a person to segregation or separate or other discriminatory treatment in any matter related to his receipt (or nonreceipt) of any such service, financial aid, property, or other benefit under the program.

(iv) Restricts a person in any way in the enjoyment of services, facilities, or any other advantage, privilege, prop-

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erty, or benefit provided to others under the programs;

(v) Treats a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Denies a person an opportunity to participate in the program through the provision of property or services or otherwise, or affords him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section);

(vii) Denies a person the same opportunity or consideration given others to be selected or retained or otherwise to participate as a contractor, subcontractor, or subgrantee;

(viii) Denies a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, or other party subject to this part, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any program, or the class of persons to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program, shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect any persons of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or other party subject to this part may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, on the

grounds of race, color or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided or made available in or through or utilizing a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipients and other parties subject to this part shall take affirmative action to ensure that applicants are employed, and employees are treated during employment without regard to their race, color, or national origin. Such recipients and other parties sub-

ject to this part shall, as may be required by supplemental regulations, develop a written affirmative action plan. The requirements applicable to construction employment under any such program shall be in addition to those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it. Federal financial assistance to programs under laws funded or administered by the Department which has as a primary objective the providing of employment include those set forth in Appendix A II of this part.

(2) Where a primary objective of the Federal financial assistance to a program to which this part applies is not to provide employment, but discrimination on the grounds of race, color, or national origin, in the employment practices of the recipient or other party subject to this part, tends, on the grounds of race, color, or national origin, to exclude persons from participating in, to deny them the benefits of, or to subject them to discrimination under any such program, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other party subject to this part, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of such persons.

[38 FR 17938, July 5, 1973; 38 FR 23777, Sept. 4, 1973]

§ 8.5 Nondiscrimination clause.

(a) *Applicability.* Every application for, and every grant, loan, or contract authorizing approval of, Federal financial assistance and to provide a facility subject to this part, and every modification or amendment thereof, shall, as a condition to its approval and to the extension of any Federal financial assistance pursuant thereto, contain or be accompanied by an assurance that the program will be conducted in compliance with all requirements imposed by or pursuant to this part. The assurances shall be set forth in a nondiscrimination clause. The responsible Department official shall specify the form and contents of the nondiscrimination clause for each program as appropriate.